

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 20 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0309-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
SHERMAN LEE RUTLEDGE,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR12380

Honorable Gilberto V. Figueroa, Judge

REVIEW GRANTED; RELIEF DENIED

\_\_\_\_\_  
Sherman Lee Rutledge

Tucson  
In Propria Persona

\_\_\_\_\_  
V Á S Q U E Z, Presiding Judge.

¶1 Sherman Rutledge petitions this court for review of the trial court’s summary denial of his successive petition for post-conviction relief brought pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Rutledge was convicted of aggravated assault and two counts of first degree murder, committed in November 1985. He was sentenced to concurrent terms of life imprisonment for the murder convictions, with a consecutive fifteen-year prison term for aggravated assault. Our supreme court affirmed his convictions and sentences on appeal. *State v. Rutledge*, No. CR-86-0209-AP (memorandum decision filed Oct. 18, 1988). In what appears to be his third petition for post-conviction relief, Rutledge argued his sentence for aggravated assault was illegally made consecutive to his other prison terms. The trial court summarily denied relief, concluding the argument was precluded pursuant to Rule 32.2(a). The court noted that the argument previously had been raised on appeal, “although as a ‘cruel & unusual punishment’ issue,” and, even “[i]f not fully previously raised, on appeal, in a prior Rule 32 Petition or on Habeas Corpus, the issue could have been raised.” *See* Ariz. R. Crim. P. 32.2(a)(2), (3) (previously adjudicated or waived grounds for post-conviction relief precluded).

¶3 On review, Rutledge argues any waiver was due to the ineffectiveness of appellate and Rule 32 counsel and, therefore, he is entitled to relief. But any such claims clearly are untimely and do not fall within the exceptions to the timeliness requirement. *See* Ariz. R. Crim. P. 32.2(a), (b), 32.4(a). And, in any event, Rutledge did not raise

these claims below. Accordingly, we do not address them further. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (reviewing court will not consider issues raised for first time on review); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court . . . which the defendant wishes to present” for review). Nor do we find any error in the trial court’s conclusion that the claim Rutledge raised below is precluded pursuant to Rule 32.2(a).

¶4 We grant review but deny relief.

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge